

0017

*Handwritten:* ~~OK~~ Incoming  
c/025/0005

**From:** Joe Helfrich  
**To:** OGMCOAL  
**Date:** 4/29/2008 4:07 PM  
**Subject:** Fwd: Draft Coal Hollow/Alton  
**Place:** OGMCOAL  
**Attachments:** Alton PA.doc

Please file this "E" mail and attachment in C/025/0005 /incoming thanks.....Joe

>>> "Foster Kirby" <[FKirby@osmre.gov](mailto:FKirby@osmre.gov)> 4/29/2008 3:25 PM >>>  
Folks:

Please find enclosed a very rough draft PA for the Alton LBA and Coal Hollow Projects. Please review and comment, make corrections, add your various slices of the pie and so on. Can be both a Section 106 and a Utah 98404 document covering various actions and activities.

Thanks,

Foster Kirby

[fkirby@osmre.gov](mailto:fkirby@osmre.gov)

303-293-5039

*(WORKING DRAFT 4/29/2008)*

**PROGRAMMATIC AGREEMENT  
BETWEEN ALTON COAL,  
THE BUREAU OF LAND MANAGEMENT,  
THE OFFICE OF SURFACE MINING,  
THE UTAH STATE HISTORIC PRESERVATION OFFICER, UTAH DIVISION OF  
OIL GAS AND MINING, UTAH STATE LANDS, and ALTON COAL COMPANY  
REGARDING EFFECTS OF THE  
COAL HOLLOW MINE AND THE ALTON COAL LEASE  
??? COUNTY, UTAH**

**WHEREAS**, the United State Department of the Interior, Bureau of Land Management (Bureau) has a program which leases coal within public lands; and

**WHEREAS**, the Office of Surface Mining (OSM) is required by 30 CFR Part 746 to prepare and submit to the Secretary of the Interior (Secretary), which the Secretary has in turn delegated to the Assistant Secretary, Land and Minerals Management, a decision document recommending approval, disapproval, or conditional approval of mining plans for surface coal mining operations on lands containing leased Federal coal; and

**WHEREAS**, as codified at 30 CFR Part ??, the UTAH Division Oil Gas, and Mining has, subject to the OSM's reclamation and enforcement oversight responsibilities as per 30 CFR Parts 842 and 843, assumed primacy for the regulation of coal mining operations on non-Federal lands and Federal lands in Utah and issues mining permits for such lands; and

**WHEREAS**, State Lands

**WHEREAS**, this agreement is intended to encompass leasing, permitting and Secretarial mining plan approvals for the area of potential effects of the Coal Hollow Mine (private) and the Alton BLM Coal Lease; and

**WHEREAS**, the Bureau and OSM have determined that development of a surface mine will have repetitive and predictable effects to cultural resources, and has consulted with the Utah State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) in accordance with Section 106 of the National Historic Preservation Act 16 U.S.C. 470 et seq. (the Act) and its implementing regulations (36 CFR Part 800); and

**WHEREAS**, Alton Coal Company has submitted a permit application package to UDOGM for the Coal Hollow Mine and has applied for a lease by application for the Alton Coal Tract? preparatory to mining under UDOGM permit and an approved mine plan; and

**WHEREAS**, the following shall be deemed as parties to this agreement BLM, OSM, UDOGM, STATE LANDS, USHPO, and ALTON COAL (the Parties)

**WHEREAS**, the VARIOUS TRIBES have been consulted about their concerns regarding potential effects to culturally sensitive sites; and

**WHEREAS**, this PA, consisting of xxx (?) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral;

**NOW, THEREFORE**, the Parties and the Advisory Council (*if council chooses to be a party to the agreement*) agree the program shall be implemented in accordance with the following stipulations to take into account the effects of the coal mine development within the Coal Hollow Mine and the Alton Lease Tract upon historic properties.

### **Stipulations**

1. The lead Federal Agency (LFA) role for the purposes of this Agreement is determined as follows. The Bureau is the LFA until such a time as there is an approved Federal mining plan. Upon approval of OSM's recommendation of the Secretarial Mine Plan, OSM will assume the role of LFA. Upon OSM assuming the role of LFA the Bureau will remain an interested party for actions occurring within Bureau-administered lands throughout the life of this Agreement. (*NEED to fold UDOGM in stipulations*)
2. The Parties have determined the area of potential effect (APE) to be the area indicated in Exhibit A. The APE in this case includes areas of surface disturbance such as but not limited to the mine pit, ponds, roads, spoil piles, monitoring stations, and any adjacent parcels beyond the disturbance zone where changes in the character or use of historic properties could occur.
  - a. The proposed area of effect and a buffer have been inventoried for cultural resources and the results reviewed by the Parties, and the SHPO to determine the eligibility of such resources and the effects of the undertaking.
  - b. Consultation between the Parties and the SHPO has been completed. The results of this consultation were that ?? sites within the area of inventory were determined eligible and ?? sites were determined not eligible for consideration for inclusion within the National Register of Historic Places. Of these it is anticipated that ?? eligible properties and ?? not-eligible sites will be affected by the proposed area of effect.
3. Alton Coal Company will fund a Comprehensive Cultural Resource Management Plan for data recovery. A draft will be submitted for review to the Parties to this Agreement by the LFA, who will coordinate modifications necessary to satisfy the comments received from the parties. The parties shall have thirty (30) calendar days to provide comments after which time the LFA may assume concurrence with the plan and proceed accordingly. If a Party is unable to meet the thirty (30) calendar day deadline, they may request at any time prior to the expiration of this deadline, an extension, whereupon the

LFA will determine whether to grant such extension. If there is an objection to the adequacy of the plan the LFA will invoke the dispute resolution clause (Stipulation 10) and try to resolve the dispute to the satisfaction of the disputing party. Based upon the outcome the LFA will make a decision as to whether or how to implement the plan. Upon completion of this process Alton Company will fund the approved data recovery plan according to its terms.

4. All data recovery conducted under this Agreement shall result in the generation of a professional quality report or reports which meet the reporting standards recommended by the Secretary of the Interior (FR48(190)44734ff).

- a. Reports regarding the implementation mitigation plans will be submitted to the LFA based upon schedules established in the data recovery plan.
- b. The LFA will distribute said report(s) to the Parties except the SHPO within thirty (30) calendar days of receipt for initial review. The Parties shall review the reports first and require modifications as necessary to correct errors and meet Secretarial and SHPO standards.
- c. Once the Parties are satisfied with the quality and accuracy, of the report(s) as well as their conformance with Secretarial standards, the LFA will submit the report(s) to the SHPO for concurrence in the adequacy of the data recovery effort for meeting the terms of the data recovery plan. SHPO shall have thirty (30) calendar days from receipt of the report(s) to provide comments. If SHPO is unable to meet the thirty (30) calendar day deadline, SHPO may request at any time prior to the expiration of this deadline, an extension, whereupon the LFA will determine whether to grant such extension.

5. Authorization to begin mine-related activities must come from UDOGM and/or OSM as per the conditions of the mining permit and approved mine plan and subject to compliance with the terms of the data recovery plan under this Agreement.

6. Should unforeseen effects to known historic properties or previously unanticipated properties be located through other means, the LFA will notify the parties of said effects within seven (7) days of their discovery. Should the discovery involve a potential Traditional Cultural Property the affected tribes will be notified and consulted, as appropriate. The LFA, the signatories, and any affected tribes will consult further to determine appropriate measures. All parties will be afforded thirty (30) calendar days to respond. In the case of previously unanticipated properties, parties shall consult upon eligibility, effect, and measures necessary to mitigate effects of the undertaking upon historic properties. When agreement is reached between the parties the appropriate measures decided upon will be implemented.

7. The LFA will submit an annual report to the parties each year detailing the activities conducted under this Agreement. This report will be submitted to the parties by January 15<sup>th</sup> of each year and will document activities specified in this Agreement conducted during the previous fiscal year.

8. Alton Coal Company shall fund and implement all cultural resources fieldwork, analysis, and monitoring, required under this Agreement.
9. Any party to this Agreement may request that it be amended, whereupon the parties will consult to reach agreement on amendments which shall be executed in the same manner as the original agreement.
10. Should any signatory to this Agreement object within thirty (30) days to any activity pursuant to this Agreement, the LFA shall consult with the objecting party to resolve the objection. If the LFA determines the objection cannot be resolved, the LFA shall forward all documentation relevant to the dispute to the Council. Within thirty days after the receipt of all pertinent documentation, the Council will either:
  - a. provide the LFA with recommendations, which the LFA will take into account in reaching a final decision regarding the dispute; or
  - b. notify the LFA that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the LFA in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; the LFA's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.
11. Any signatory to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the LFA will comply with 36 CFR Part 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.
12. This Agreement shall remain in effect for five (5) years from its date of execution by the signatories.

**Execution of this Programmatic Agreement by the Bureau, OSM, UDOGM, STATE LANDS, and the SHPO, and implementation of its terms, evidence that the Parties have afforded the SHPO an opportunity to comment on the Coal Hollow Mine and the Alton Lease By Application "Mine" within the area of potential effect and its effects upon historic properties, and that the Parties have taken into account the effects of coal mine development on historic properties.**

Signatories

*Bureau of Land Management*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Office of Surface Mining*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Richard Holbrook, Chief of Program Support

*Wyoming State Historic Preservation Officer*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Utah Department of Oil, Gas, and Mining*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Utah Department of State Lands*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Advisory Council on Historic Preservation*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Alton Coal Company*

By: \_\_\_\_\_ Date: \_\_\_\_\_

*Concurring Parties???*

Appendix A – **Area of Potential Effect**

Appendix B – **Comprehensive Cultural Resource Management Plan**